

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

SEP 19 2008

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W.H. DEPUTY

RICKY THORNTON,)
)
Petitioner,)
)
vs.)
)
WALTER DINWIDDIE, Warden,)
)
Respondent.)

No. CIV-07-1321-W

ORDER

On August 29, 2008, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss filed by respondent Walter Dinwiddie be denied. The parties were advised of their right to object to the Report and Recommendation, and the matter now comes before the Court on Dinwiddie's Objection.¹

Upon de novo review of the record, the Court concurs with Magistrate Judge Argo's suggested disposition of Dinwiddie's Motion to Dismiss. Dinwiddie had sought dismissal of the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Ricky Bernard Thornton on the grounds that the Petition was untimely filed, and it is clear that in the absence of tolling, equitable or statutory, that Thornton's claims for relief are time-barred. E.g., 28 U.S. 2244(d).

Thornton did not respond to Dinwiddie's Motion to Dismiss; thus, Thornton has advanced no arguments that he is entitled to equitable tolling. As to statutory tolling

¹The Court notes that Magistrate Judge Argo in his Report and Recommendation advised Dinwiddie that he was permitted to reurge the issue of timeliness in a motion seeking summary judgment. The record indicates that Dinwiddie at the same time he objected to the Report and Recommendation also filed a Motion for Summary Judgment.


permitted under title 28, section 2244(d)(2) of the United States Code, as Magistrate Judge Argo noted, "in the context of a motion to dismiss with its attendant standards," the Court cannot determine whether the limitations period has been statutorily tolled in this instance.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation issued on August 29, 2008; and

(2) DENIES Dinwiddie's Motion to Dismiss [11] filed on April 1, 2008.

ENTERED this 19th day of September, 2008.

A handwritten signature in black ink, appearing to read "Lee R. West", written over a horizontal line.

LEE R. WEST
UNITED STATES DISTRICT JUDGE